

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	
Landia Chemical Company Site)	U.S. EPA Region 4
Lakeland, Polk County, Florida)	CERCLA Docket No. 04-2011-3760
)	
HERCULES INCORPORATED)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and redelegated from the Regional Administrator through the Director of the Superfund Division (formerly the Waste Management Division), to the Chief of the Superfund Enforcement and Information Management Branch, by EPA Regional Delegation R-14-14-D.

This Settlement Agreement is made and entered into by EPA and Hercules Incorporated ("Settling Party"). Settling Party consents to and will not contest the authority of



the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Landia Chemical Company Site ("Site") located in Lakeland, Polk County, Florida. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). EPA also alleges that the toxaphene storage tank previously located on the Site was a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing response action, EPA has incurred response costs at or in connection with the Site.

6. The United States, on behalf of EPA, previously entered into a consent decree ("RD/RA Consent Decree") in *United States v. Landia Chemical Company, Inc. et al.*, No. 8:09-cv-01325-VMC-TBM, providing for the design and implementation of response actions at the Site by seven settling defendants ("Performing Parties"). The RD/RA Consent Decree was entered by the United States District Court for the Middle District of Florida on August 28, 2009.

7. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred and to be incurred at or in connection with the Site. EPA alleges that Settling Party's liability is based on its ownership of a 12,000-gallon toxaphene storage tank at the Site from approximately 1971 to 1979, and alleged releases of toxaphene during material loading, which contacted soil in the immediate vicinity of the tank.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this

Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Covered Oversight Costs" shall mean the first \$796,454.46 of costs that EPA has incurred or incurs in monitoring and supervising Performing Parties' compliance with the RD/RA Consent Decree.

c. The term "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVI.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Landia Chemical Company Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

j. "Parties" shall mean EPA and Settling Party.

k. "Past Response Costs" shall mean all costs other than Covered Oversight Costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through such date.

l. "Performing Parties" shall mean the settling defendants that were signatories to the

RD/RA Consent Decree: Landia Chemical Company, Inc.; Agrico Chemical Company; BASF Sparks, LLC; PCS Joint Venture, Ltd.; Sylvite Terminal & Distribution LLC; Billy G. Mitchell; and Walter G. Grahm.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "RD/RA Consent Decree" shall mean the shall mean the consent decree in *United States v. Landia Chemical Company, Inc. et al.*, No. 8:09-cv-01325-VMC-TBM, entered by the United States District Court for the Middle District of Florida on August 28, 2009.

o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

q. "Settling Party" shall mean Hercules Incorporated.

r. "Site" shall mean the Landia Chemical Company Site, encompassing approximately 14 acres, located at 1405 West Olive Street and 1607 West Olive Street in Lakeland, Polk County, Florida, and depicted generally on the map attached as Appendix A.

s. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

11. Within 30 days after the Effective Date, Settling Party shall pay to the EPA Hazardous Substance Superfund \$100,000.00, plus an additional sum for Interest on that amount calculated from the date that this Settlement Agreement is signed by EPA through the date of payment. Payment shall be made in accordance with the procedures provided in Paragraph 12.

12. Payment shall be made to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A4H9 and the EPA docket number for this action.

13. At the time of payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

Such notice shall reference Site/Spill ID Number A4H9 and the EPA docket number for this action.

14. The total amount to be paid by Settling Party pursuant to Paragraph 11 shall be deposited by EPA in the Landia Chemical Company Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

15. Interest on Late Payments. If Settling Party fails to make the payment required by Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 11 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$750.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties," shall reference Site/Spill ID Number A4H9 and the EPA docket number for this action, and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c. At the time of payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati

Finance Office by email at acctsreceivable.cinwd@epa.gov or by mail to

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

Such notice shall reference Site/Spill ID Number A4H9 and the EPA docket number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. §9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

19. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover Past Response Costs or Covered Oversight Costs. These covenants shall take effect upon receipt by EPA of the payment required by Paragraph 11 and any Interest or stipulated penalties due thereon under Paragraph 15 (Interest on Late Payments) or 16 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenants by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA

reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Covered Oversight Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANTS BY SETTLING PARTY

22. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Covered Oversight Costs, or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. § 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs or Covered Oversight Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Florida, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States, including any department, agency, or instrumentality of the United States, pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs or Covered Oversight Costs.

23. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Claims Against De Micromis Parties. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

25. The waiver in Paragraph 24 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. §6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. §9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. The Parties agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

28. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs and Covered Oversight Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for Past Response Costs and Covered Oversight Costs.

29. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants by EPA set forth in Section VII.

31. Effective upon the execution of this Settlement Agreement by Settling Party, Settling Party agrees that the time period after the date of its execution shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 28 of this Settlement Agreement, and that, in any action brought by the United States related to the "matters addressed" as defined in Paragraph 28 of this Settlement Agreement, Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time after its execution of this Settlement Agreement. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XI. RETENTION OF RECORDS

32. Until 10 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records")

now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the ten-year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such record, and, upon request by EPA, Settling Party shall deliver such Records to EPA. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all Records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

34. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site, since the earlier of notification of potential liability by the United States or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Bill Denman
Remedial Project Manager
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

and

Paula V. Painter
U.S. Environmental Protection Agency, Region 4
SEIMB
61 Forsyth Street, SW
Atlanta, GA 30303

As to Settling Party:

Richmond L. Williams
Chief Counsel, Environmental Litigation
Ashland Inc.
1313 N. Market Street
Wilmington, DE 19894

XIII. INTEGRATION/APPENDIX

36. This Settlement Agreement and its appendix constitute the final, complete and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement: "Appendix A" is the map of the Site.

XIV. PUBLIC COMMENT

37. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XV. ATTORNEY GENERAL APPROVAL

38. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVI. EFFECTIVE DATE

39. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

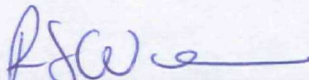
U.S. Environmental Protection Agency

By: ANITA L. DAVIS FOR
Anita L. Davis, Chief
Superfund Enforcement and
Information Management Branch
Superfund Division
Region 4

6/27/11
Date

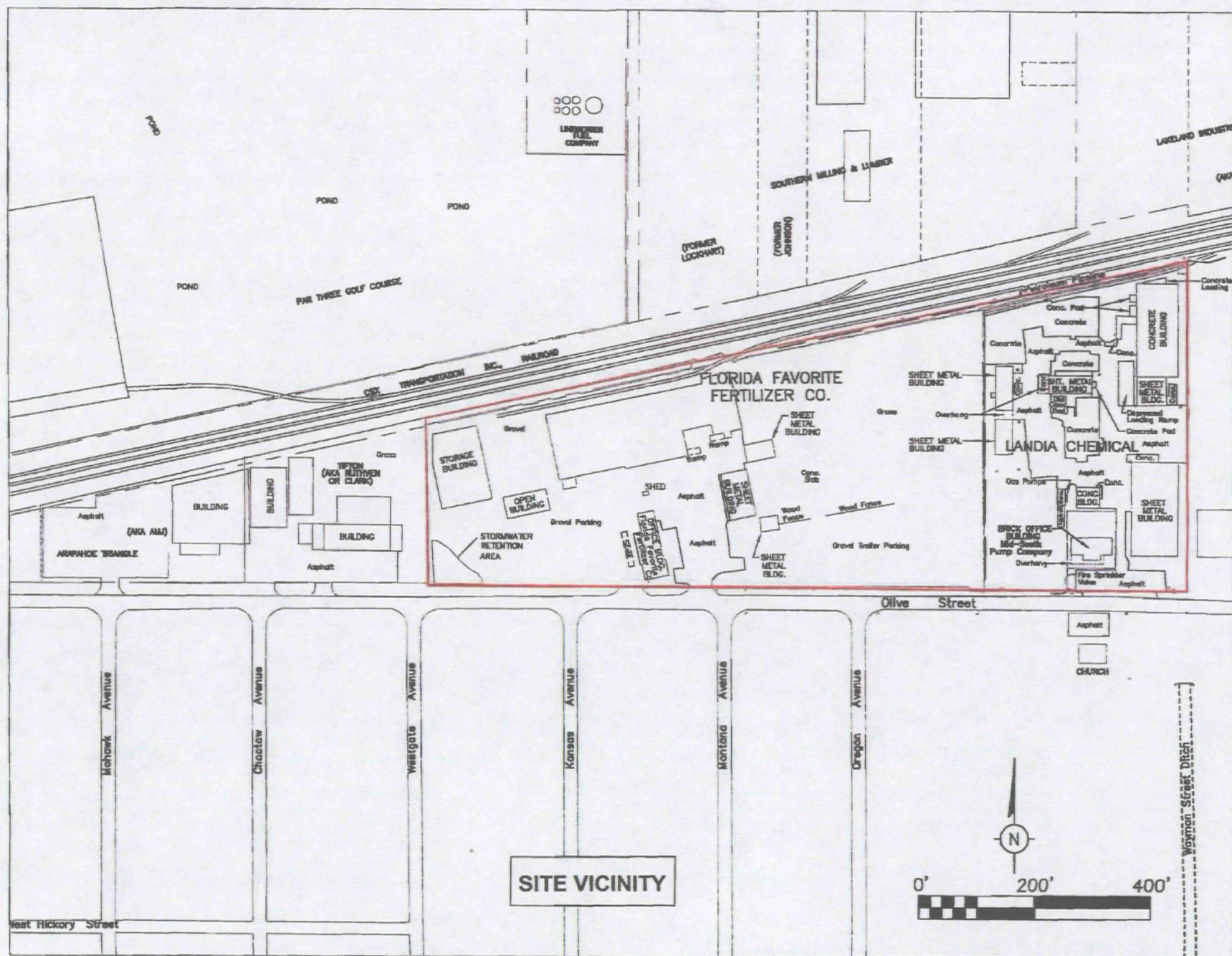
THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of EPA docket number _____, relating to the Landia Chemical Company Site, Lakeland, Polk County, Florida:

FOR SETTLING PARTY: Hercules Incorporated

By: 
Richmond L. Williams
Chief Counsel, Environmental Litigation
Ashland Inc.
1313 N. Market Street
Wilmington, DE 19894

5/5/11
Date

Appendix A



Landia Chemical Company Site Map

APPENDIX B

RESPONSIVENESS SUMMARY

Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9622(i), requires the EPA to publish in the Federal Register notice of proposed settlement agreement entered under Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), with Hercules Incorporated (Hercules), and, for a 30-day period beginning on the date of publication, to provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) further requires the EPA to consider any comments filed during the 30-day period and permits the EPA to withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

In accordance with Section 122(i) of CERCLA, the EPA published notice of a proposed settlement agreement, EPA Docket No. 04-2011-3760, concerning the Landia Chemical Company Superfund Site (Site) located in Lakeland, Polk County, Florida, in the Federal Register on July 27, 2011, at 76 Fed. Reg. 44,912.

The EPA received one set of comments on the proposed settlement, from a group of potentially responsible parties ("PRPs") conducting a remedial action at the Site. The comments received state that "the factual premise upon which the EPA bases the settlement represents an inadequate and incomplete recitation of the involvement of Hercules with toxaphene disposal at the Landia Site." The comments are summarized as follows:

1. Hercules used the Site as a disposal site for toxaphene;
2. Hercules's direct activities during ownership of the 12,000 gallon toxaphene tank resulted in releases of toxaphene to the Site extending beyond the "immediate vicinity of the tank"; and
3. Hercules is a recalcitrant PRP.

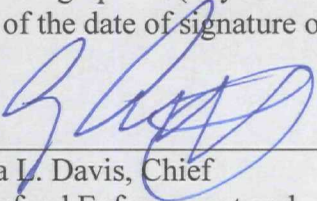
EPA's responses are as follow:

1. Hercules used the Site as a disposal site for toxaphene. The comments assert that 1) Hercules had toxaphene contaminated waste generated from its closed Brunswick facility and wanted to use it as a pesticide product in 1983; and 2) Hercules shipped approximately 600 55-gallon drums of toxaphene sludge to the Landia facility in 1983. In evaluating the appropriateness of this settlement, EPA was aware that some evidence suggested that Hercules had shipped toxaphene sludge to the Site. However, EPA is also aware that the Site operators took in a considerable amount of toxaphene between 1971 and 1987, making Hercules's shipments from the Brunswick facility a fraction of the overall volume of toxaphene received at the Site. Therefore, even assuming the release of any such toxaphene sent by Hercules to the Site from the Brunswick facility, and Hercules's liability for such shipments, EPA believes that the current settlement amount is generally proportionate to Hercules's liability.
2. Hercules's direct activities during ownership of the 12,000 gallon toxaphene tank resulted in releases of toxaphene to the Site extending beyond the "immediate vicinity of the tank." The comments state that there were also periodic minor spills during loading and unloading of tanker trucks that would have been washed by rain towards another contaminated area of the Site. Data reviewed by the EPA does not support the contention that any such spills of toxaphene moved beyond the vicinity of the tank to other portions of the Site. Accordingly, even assuming Hercules's liability for spills from a third party's

trucks, such spills would not materially change Hercules's overall liability at the Site. Therefore, this comment does not suggest that the settlement is inadequate.

3. Hercules is a recalcitrant PRP. The comments state that Hercules should pay a greater amount due to its refusal to participate in previous settlement negotiations with the other PRPs and the fact that its involvement was more pervasive than that of the other PRPs. However, the EPA considered all of the facts surrounding Hercules's liability, the risks and costs that would accompany litigation, and other considerations attendant to the Site – including Hercules's recalcitrance – and arrived at an appropriate settlement amount. As to the PRPs' request that the EPA collect the PRPs' response costs, CERCLA authorizes the EPA to recover only its own response costs, not the response costs incurred by the PRPs. Moreover, the settlement is not prejudicial to the commenters. The settlement agreement provides Hercules with protection from contribution actions or claims only with respect to Past Response Costs or Covered Oversight Costs as defined in the settlement agreement.

The comments received on this proposed settlement did not disclose to the EPA facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. As of the date of this Responsiveness Summary, the proposed settlement is, therefore, final and effective. In accordance with Paragraph 11 (Payment of Response Costs) of the settlement agreement, payment is due within 30 days of the date of signature of this Responsiveness Summary.


Anita L. Davis, Chief
Superfund Enforcement and
Information Management Branch
Superfund Division
U.S. Environmental Protection Agency, Region 4

12/23/2014
Date